IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

Crl.MC.No. 3653 of 2006()

CCMC.62/2006 of Sub-Divisional Magistrate's Court Chengannur

PETITIONER: ACCUSED

K.K.SREENIVASAN, S/O. GOVINDA PANICKER,
CHELUPPILLI HOUSE, CHEPPAD,
KANICHANELLOOR, MUTTOM P.O., HARIPPAD,
ALAPPUZHA.

BY ADV. SRI.S.SANTHOSH KUMAR
SRI.S.VINODKUMAR

RESPONDENTS: COMPLAINANT

SUB INSPECTOR OF POLICE,
KAREELAKULANGARA POLICE STATION,
HARIPPAD, ALAPPUZHA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR: SRI.AKBAR.K.A

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT.J

Crl.M.C No. 3653 OF 2006

Dated this the 11th day of December 2006

ORDER

The petitioner has received Annxure-9 notice issued under Section 107 of the Cr.P.C calling upon him to appear before the Sub-Divisional Magistrate Chengannur. The said notice is dated 12-10-2006. The petitioner was directed to appear on 18-10-2006 The petitioner has come to this Court with this Crl.M.C complaining that the proceedings under Section 107 has been initiated against him without sufficient justification and in total disregard of the provisions of the Code of Criminal Procedure. The stipulations of Chapter 8 have not been complied with at all it is complained. In these circumstances it is prayed that this Crl.M.C may be allowed and Annexure -9 notice may be set aside.

2. The learned counsel for the petitioner first of all submits that there is absolutely no worthwhile information received by the Sub-Divisional Magistrate to indicate that the petitioner- a peace-loving person and a respectable individual of the locality is in any way likely to commit breach of the peace or disturb the public tranquility. It is true that there is a dispute regarding the rights over the alleged pathway. The petitioner was

attacked and there is a counter allegation against the petitioner also in respect of that incident which allegedly took place on 27-6-2006. Except that, there is absolutely nothing to indicate that the petitioner is in any way involved in any criminal offences. That allegation raised against the petitioner is false and is raised with oblique motives. That cannot ever be the foundation for any proceedings under Section 107 of the Cr.P.C submits the learned counsel for the petitioner

3. The learned counsel for the petitioner submits that even assuming that proceedings under Section 107 can be initiated legally, the action of the Sub-Divisional Magistrate is in gross disregard of the legal provisions. The learned counsel points out that under Section 111 an order in writing is to be passed setting forth the substance of the information received . Section 114 mandates that a notice like Annexure-9 in this case must be accompanied by such order passed under Section 111. It is only thereafter that the Magistrate can proceed to conduct enquiry under Section 116 of the Cr.P.C. The learned counsel for the petitioner submits that in as much as no order under Section 111 has been passed and in as much as no copy of the order under Section 111 has accompanied Annexure-9 notice issued to the petitioner under Section 114 and the proceedings are liable to

be quashed.

4. The learned Public Prosecutor after taking instruction submits that no order under Section 111 has been passed and no such order had accompanied the notice Annexure-9 issued to the petitioner. Initiation of proceedings under Section 107 is one of great consequence so far as the person proceeded against is concerned. The learned Public Prosecutor after discussions at the Bar only submits that if the same be found to be necessary the Sub-Divisional Magistrate may be given the option to pass fresh orders under Section 107/111.

5. I do not want to grant the Sub-Divisional Magistrate any permission to pass any such orders. I need only mention that if circumstances exist justifying such passing of orders under Section 107 r/w 111, setting aside of Annexure-9 notice by this judgment will not in any way fetter such rights of the Sub-Divisional Magistrate to pass appropriate orders.

6. At the moment and with the available inputs I am satisfied that proceedings under Section 107 do not deserve to be continued and the same

deserves to be quashed by invoking the powers under Section 482 of the Cr.P.C

7. In the result this Crl.M.C is allowed . Annexure-9 notice issued to the petitioner by the Sub-Divisional Magistrate is hereby set aside. It is made clear that setting aside of Annexure -9 notice will not in any way fetter or detract against the powers of the Sub-Divisional Magistrate in Chapter 8 to pass appropriate orders under Section 107 read with 111 if circumstances exist justifying such a course.

R.BASANT, JUDGE

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